



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

October 26, 2017

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Darleen Lebow**
Tax Registry No. 925590
Critical Response Command
Disciplinary Case Nos. 2015-13513 & 2016-15950

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on April 26, 2017, charged with the following:

DISCIPLINARY CASE NO. 2015-13513

1. Police Officer Darleen Lebow, assigned to Police Service Area 1, on or about February 27, 2015, while on-duty and in Richmond County, failed to comply with a lawful order, to wit: Police Officer Lebow failed to comply with Sergeant Ernest Urbina's order to leave the Ferry Security Office.

P.G. 203-03, Page 1, Paragraph 2

**COMPLIANCE WITH
ORDERS**

2. Police Officer Darleen Lebow, assigned to Police Service Area 1, on or about February 27, 2015, while on-duty and in Richmond County, acted discourteous to Sergeant Urbina in that after he directed her to perform an hour of overtime, she entered his office, slammed her duty jacket and gun belt down, walked past him and stated, in sum and substance, "This is bullshit. I'll just stay and deal with the kids that we can't do shit about." (*As amended*)

P.G. 203-09, Page 1, Paragraph 2

**PUBLIC CONTACT –
GENERAL**

DISCIPLINARY CASE NO. 2016-15950

1. Police Officer Darleen Lebow, assigned to Patrol Borough Staten Island, on or about March 7, 2016 and March 10, 2016, while on Sick Report in Richmond County, was out of residence without permission of a District Surgeon or Sick Desk supervisor.

Operations Order 22 of 2011

**PILOT PROGRAM –
HOME CONFINEMENT
WHILE ON SICK LEAVE**

2. Police Officer Darleen Lebow, assigned to Patrol Borough Staten Island, on or about March 9, 2016, while on Sick Report in Richmond County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Lebow informed Sergeant Donald Bruce that she could not drive, which was false.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**


3. Police Officer Darleen Lebow, assigned to Patrol Borough Staten Island, on or about March 9, 2016, while on Sick Report in Richmond County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Lebow stated to Department [REDACTED], in sum and substance, I'm still not driving. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

In a Memorandum dated June 14, 2017, Assistant Deputy Commissioner David S. Weisel found Police Officer Darleen Lebow Guilty after she pleaded Guilty to all Specifications in Disciplinary Case Nos. 2015-13513 and 2016-15950. Having read the Memorandum and analyzed the facts of this matter, I approve the findings but disapprove the penalty for Police Officer Lebow.

I have considered the totality of issues for the various acts of misconduct for which Police Officer Lebow pleaded Guilty, and deem that a greater penalty and a period of monitoring is warranted. Therefore, Police Officer Lebow's disciplinary penalty shall be the forfeiture of forty (40) vacation days and the imposition of one (1) year dismissal probation.


James P. O'Neill
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

June 14, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Darleen Lebow
Tax Registry No. 925590
Critical Response Command
Disciplinary Case Nos. 2015-13513 & 2016-15950

Charges and Specifications:

Disciplinary Case No. 2015-13513

1. Police Officer Darleen Lebow, assigned to Police Service Area 1, on or about February 27, 2015, while on-duty and in Richmond County, failed to comply with a lawful order, to wit: Police Officer Lebow failed to comply with Sergeant Ernest Urbina's order to leave the Ferry Security Office.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

2. Police Officer Darleen Lebow, assigned to Police Service Area 1, on or about February 27, 2015, while on-duty and in Richmond County, acted discourteous to Sergeant Urbina in that after he directed her to perform an hour of overtime she entered his office, slammed her duty jacket and gun belt down, walked past him and stated, in sum and substance, "This is bullshit." I'll just stay and deal with the kids that we can't do shit about." (*As amended*)

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT – GENERAL COMPLAINTS

Disciplinary Case No. 2016-15950

1. Police Officer Darleen Lebow, assigned to Patrol Borough Staten Island, on or about March 7, 2016 and March 10, 2016, while on Sick Report in Richmond County, was out of residence without permission of a District Surgeon or Sick Desk supervisor.

Operations Order 22 of 2011 – PILOT PROGRAM – HOME CONFINEMENT
WHILE ON SICK LEAVE

2. Police Officer Darleen Lebow, assigned to Patrol Borough Staten Island, on or about March 9, 2016, while on Sick Report in Richmond County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Lebow informed Sergeant Donald Bruce that she could not drive, which was false.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT

3. Police Officer Darleen Lebow, assigned to Patrol Borough Staten Island, on or about March 9, 2016, while on Sick Report in Richmond County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Lebow stated to Department [REDACTED], in sum and substance, I'm still not driving. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT

Appearances:

For the Department: Scott Rosenberg, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For Respondent: Michael Martinez, Esq.
Worth, Longworth & London LLP
111 John Street, Suite 640
New York, NY 10038

Hearing Date:
April 26, 2017

Decision:
Guilty

Trial Commissioner:
ADCT David S. Weisel

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on April 26, 2017. Respondent, through her counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, assessing the credibility of the witness, and Respondent having pleaded Guilty to the charges, the Court finds Respondent Guilty.

SUMMARY OF EVIDENCE IN MITIGATION

Case No. 2015-13513

Respondent testified that she had been a member of the Department for nearly twenty years. She lived on [REDACTED] in [REDACTED]. She was a single mother and had two

[REDACTED] The younger daughter, [REDACTED] [REDACTED]

[REDACTED] (Tr. 15-21, 31-32, 34-35).

Respondent testified that her [REDACTED] had an impact on her work with the Department. She often had to leave work to pick up [REDACTED] from school or take her to the [REDACTED]. On one such [REDACTED] visit, Respondent met a supervisor from the Department who asked about her situation. He told Respondent that she should apply for a hardship assignment. Respondent did so and was assigned to the Staten Island Ferry Security Unit. This assignment involved steady day tours, weekends off, little activity, and most importantly for Respondent, no overtime and the ability to leave the Staten Island terminal to attend to [REDACTED] if necessary (Tr. 19-21).

Respondent testified that her assignment worked reasonably well for a time. At some point, however, new supervisors came to the command. Also around that time, a new fast food restaurant opened at the Staten Island terminal and was attracting a large number of youths after school. The new supervisors began instituting mandatory overtime at the end of the day tours. Respondent testified that she asked for advance notice of when she would need to perform overtime, so that she could make arrangements for [REDACTED]. She was told that she would get notice (Tr. 21-22).

On February 27, 2015, however, Respondent was assigned overtime without receiving prior notice. She admitted at the mitigation hearing that she engaged in the conduct listed in the specifications. Respondent testified that she was frustrated at the situation (Tr. 23-25).

Case No. 2016-15950

After these events, Respondent had [REDACTED]. She got into an off-duty car accident, putting her out of work. Separately, she also needed [REDACTED] [REDACTED] in October 2015. This trauma, as well as [REDACTED], contributed to her subsequent [REDACTED]. She remained out sick following [REDACTED] and throughout her [REDACTED]. Respondent and her [REDACTED] daughter stayed with Respondent's parents at their home on [REDACTED] in [REDACTED] (Tr. 26-28, 32-33).

Respondent testified that during her recovery she took [REDACTED] twice a day, which impeded her driving. Respondent drove to the pharmacy or took [REDACTED] to school during the period [REDACTED] when her parents were unable to do so, and would take [REDACTED] afterward. [REDACTED] was accumulating absences [REDACTED] issues and had to attend school in order to graduate (Tr. 29-31, 34).

When Respondent met with the Department [REDACTED], she told her that she was unable to drive [REDACTED] but there were times she had to drive herself [REDACTED] if her family was not available. She testified that she made the same representation to Sergeant Donald Bruce. She clarified to Bruce that she was staying with her parents, even though Department records still had her official residence as [REDACTED] (Tr. 31-32, 36).

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to

the Department on March 1, 2000. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent's counsel recommended that this tribunal impose a penalty of the loss of 25 vacation days based on Respondent's good overall service record, the particularly sympathetic facts of this case, and little need for deterrence. With this, counsel argued, the Court would be able to "temper justice with mercy and balance the needs of the Department with the needs of the individual" (Tr. 43).

The Advocate argued that the tribunal needed to penalize Respondent for her discourteous conduct during roll call and failure to remain at her residence and not receiving permission from the sick desk prior to leaving. In addition, the Department asserted that Respondent needed to be penalized for falsely stating to Bruce and the Department [REDACTED] that she was not driving. For this, the Department recommended that the Respondent forfeit 40 vacation days and be placed on one year of dismissal probation.

The precedent is on the side of the Department. For example, in *Case No. 2014-12537* (Nov. 18, 2015), an eight-year member with no prior disciplinary record forfeited 25 vacation days for acting discourteously to her supervisor, failing to promptly report to her post after roll call, reporting late to roll call, and refusing to accept a notification to appear for an official Department interview.

False statements to Medical Division personnel regarding their assessments of an officer's ability to return to work have garnered even higher penalties. In *Case No.* [REDACTED] [REDACTED] a nine-year member with no history forfeited 35 vacation days and was placed on one year dismissal probation after exaggerating the extent of his injury and falsely telling two District Surgeons on two different occasions that he could not drive. When an absence control investigator did surveillance, he observed him driving. Similarly, in *Case No.* [REDACTED]

██████ an 11-year member forfeited 30 vacation days and was placed on one year dismissal probation where she used a cane at the Medical Division to exaggerate her injury and informed the District Surgeon that she could not perform restricted duty. The tribunal held that she was able to perform restricted duty and walk for extended periods of time, unassisted by a cane. This contradicted her statement to the District Surgeon that she could not perform restricted duty or walk or sit for extended periods of time.

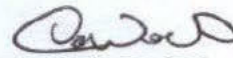
In cases not involving outright attempts at exaggeration or malingering, however, the penalties have been lesser. In *Case No. 2015-13053* (Sept. 9, 2015), an eight-year member with no history forfeited 25 vacation days when he reported sick after being denied time off. When an absence control sergeant went to his residence, he discovered the member was not there and had instead gone out of state without authorization. In *Case No. 2013-9369* (Aug. 4, 2014), a 20-year member with no record forfeited 25 vacation days after falsely telling the District Surgeon on two different occasions that she could not drive. In addition, on another date, she was absent from her residence while sick for about an hour-and-a-half without permission.

The Department has an interest and responsibility to ensure appropriate use of its generous sick leave benefits. The instant case, however, does not involve an exaggeration of injury to avoid work. While Respondent's statements about not being able to drive were not true, she credibly testified that although she technically could drive, her ██████████ made it dangerous to do so. Respondent acknowledged that she should have explained fully the circumstances of her limited driving ability and the sleep-inducing effects of ██████████ to the Medical Division personnel. Furthermore, when Respondent was out of her officially listed residence, she drove only to her parents' home on ██████████ to her ██████████ school, or to medical appointments, for legitimate reasons of necessity. Thus, dismissal probation does not appear to be appropriate.

Furthermore, this tribunal considers the mitigating factor that Respondent was under extraordinary stress as a single mother, juggling the responsibilities of raising two children. One of [REDACTED] requires demanding [REDACTED] due to a [REDACTED]. The discourtesy appears to have arisen out of frustration, rather than a lack of respect for supervisory authority or unwillingness to abide by Department guidelines.

As such, the Court recommends a penalty of the forfeiture of 35 vacation days to cover both cases.

Respectfully submitted,



David S. Weisel

Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DARLEEN LEBOW
TAX REGISTRY NO. 925590
DISCIPLINARY CASE NOS. 2015-13513 & 2016-15950

Respondent was appointed to the Department on March 1, 2000. She has received an overall rating of 3.0 "Competent" on her 2015 and 3.5 "Highly Competent/Competent" on her 2014 and 2013 evaluations. [REDACTED]

Respondent was placed on Level 1 Discipline Monitoring as a result of the present case. Her monitoring remains ongoing. She has no prior formal disciplinary history.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner Trials